

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Ex Parte Petition for Interim Suspension

Order against:

JASON K. BOUTROS, M.D.,

Physician's and Surgeon's Certificate No. A 42891,

Respondent.

Agency Case No. 800-2022-087015

OAH No. 2022110607

ORDER RE: PETITION FOR INTERIM SUSPENSION ORDER

Petitioner William Prasifka (petitioner), Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, State of California, petitioned ex parte for an Interim Suspension Order (ISO) suspending Physician's and Surgeon's Certificate Number A 42891 held by respondent Jason K. Boutros, M.D.

Howard W. Cohen, Administrative Law Judge with the Office of Administrative Hearings, presided over the ex parte ISO hearing, conducted remotely by video and teleconference on December 9, 2022.

Latrice R. Hemphill, Deputy Attorney General, represented petitioner.

Peter R. Osinoff, Attorney at Law, represented respondent Jason K. Boutros, M.D., who was present.

Petitioner and respondent submitted documents, including declarations, and presented oral argument.

Both parties agreed that there will be no need for a noticed ISO hearing following this ex parte hearing, because they have submitted all relevant evidence in support of and in opposition to the ISO petition and have completed oral argument.

The ex parte petition is, therefore, deemed a noticed petition for interim suspension order under Government Code section 11529, rather than an ex parte petition.

The record was closed and the matter was submitted on December 9, 2022.

FACTUAL FINDINGS

Jurisdiction

1. The Board issued Physician's and Surgeon's Certificate Number A 42891 to respondent on July 21, 1986. The certificate is scheduled to expire on March 31, 2024.

2. On November 18, 2022, petitioner filed and served notice of the ISO petition in accordance with California Code of Regulations, title 1, section 1012. In the petition, petitioner seeks an ISO under Government Code section 11529 to suspend respondent's certificate number A 42891 in order to prevent him from practicing

medicine pending a final decision on the Accusation to be filed in this matter.

Petitioner filed all documents in this matter in his official capacity.

3. The ex parte hearing was originally scheduled to take place on December 2, 2022. Petitioner and respondent jointly moved to continue the ex parte hearing to allow respondent time to prepare and file papers and declarations in opposition to the petition. On November 22, 2022, the continuance motion was granted and argument was moved to December 9, 2022.

4. Respondent filed and served papers and declarations in opposition to the petition on December 7, 2022.

5. All declarations and other documents in support of and in opposition to the petition were served on the parties before the ex parte hearing of this matter; those declarations and documents are deemed to have been served under Government Code section 11529, subdivision (c).

The Petition

6. The petition and supporting declarations establish, by a preponderance of the evidence, that on more than one occasion respondent used a controlled substance prescribed to one of his patients and that he attempted to conceal that fact from Board investigators.

7. Respondent is a board-certified internist who owns and operates a solo practice in Pasadena.

8. On March 25, 2022, the Board's Central Complaint Unit received an anonymous complaint alleging, among other things, that respondent was diverting prescription medication.

9. On June 2, 2022, investigators with the Department of Consumer Affairs' Division of Investigation's Health Quality Investigations Unit (HQIU) conducted a field visit to respondent's medical practice. Respondent was asked to provide a voluntary urine sample, which he did. Respondent informed investigators he was not currently taking any prescription medication and only took multivitamins and over the counter medications. (Ex. 3, p. A17.)

10. Results of the urine test were positive for Tramadol. Tramadol, a synthetic opioid analgesic, is a Schedule IV controlled substance used to treat moderate to severe pain.

11. On June 21, 2022, Investigators Joe Fleming and Jesse Lopez visited respondent and informed him of the positive test result for Tramadol. Respondent stated that he did not have a prescription for Tramadol and does not take any narcotics. Respondent further stated that he did not have samples of Tramadol in his office and does not dispense prescriptions directly from his office. Investigator Fleming asked respondent whether he might have had any reason to take Tramadol prior to providing his voluntary urine sample. Respondent answered that he told a patient he had shoulder pain and the patient offered him some of the patient's prescription Tramadol. Investigator Fleming asked respondent whether he accepted Tramadol from his patient but respondent answered he did not remember taking Tramadol and only provided an example of what could have happened.

12. During the visit, Investigator Fleming asked respondent to submit another voluntary urine sample, but respondent refused to do so.

13. On June 24, 2022, Investigator Fleming retrieved a Controlled Substance Utilization Review and Evaluation System (CURES) prescriber report for respondent for

the period May 24, 2022, through June 24, 2022. The report listed sixteen separate prescriptions for Tramadol written by respondent during the period. Five of the prescriptions were filled the week leading up to the date when respondent provided his urine sample.

14. On June 24, 2022, Investigator Fleming contacted respondent and asked whether he would submit to a voluntary mental and physical examination. Respondent refused to submit to a physical examination but agreed to submit to a mental examination.

15. On or about September 30, 2022, respondent presented for the mental examination with Jason Jalil, M.D., who is board certified in psychiatry and in geriatric psychiatry. The evidence did not establish that Dr. Jalil is an expert in addiction medicine.

16. During the mental examination, respondent initially denied the use of controlled prescription drugs. Respondent said he would routinely "take back" medications from patients if the medications were not tolerated or ineffective, lock the returned medications in a closet, and usually direct his staff to flush the pills down a toilet to destroy them. (Ex. 3, p. A42.) But he admitted keeping Tramadol for himself at least once, and admitted that he took a half tablet four or five times.

17. Dr. Jalil reported that respondent "acknowledged executing poor judgment in using medications that were not prescribed to him. He refuted having a substance use issue" (Ex. 3, p. A43.) Dr. Jalil wrote, "It is clear that the substance was in his system (as detected by urine toxicology) while at work, but [] he denied being under the influence of substances while practicing medicine." (*Ibid.*) But, Dr. Jalil

also reported, respondent "could not state if he had ever practiced medicine while under the influence of drugs" (Ex. 3, p. A44.)

18. During the mental health examination, Dr. Jalil questioned respondent about seeing a primary care physician (PCP) for assistance with his pain; Dr. Jalil reported that respondent "scoffed 'PCP'? I don't have a PCP." (Ex. 3, p. A43.)

19. Dr. Jalil diagnosed respondent with "Prescription opiate misuse; rule out prescription opiate use disorder," as well as some cognitive impairment. (Ex. 3, p. A47.) Dr. Jalil concluded that respondent "has a cognitive condition that jeopardizes the safe practice of medicine at this time, further neurocognitive evaluations and testing would be recommended to determine the extent of his illness and limitations (including his ability to practice medicine outright), while also exploring the potential etiologies of these deficits." (*Id.* at p. A48.)

20. In a declaration in support of the petition, Dr. Jalil wrote that "it is my expert opinion that respondent suffers from a mental illness or condition that impacts his ability to safely practice medicine. Respondent misuses controlled substances, specifically Tramadol, that he diverted from his patients. Moreover, respondent was under the influence of a controlled substance while working. [¶] It is my opinion that respondent should undergo a physical examination to determine the extent of his issues." (Ex. 3, p. A29.)

21. Dr. Jalil recommended that respondent attend substance abuse counseling and meetings, undergo regular and random urine toxicology screens, and have a worksite monitor. "[W]ithout such restrictions and monitoring of respondent, allowing him to practice with an unrestricted medical license in California represents an unacceptable risk to the safety of his patients and the public." (Ex. 3, p. A29.)

Respondent's Evidence

22. Richard S. Sandor, M.D., a diplomate of the American Board of Psychiatry and Neurology certified in addiction psychiatry and drug dependency, performed an addiction medicine and psychiatric evaluation of respondent on November 10, 2022. Dr. Sandor found respondent does not suffer from a substance use disorder. Respondent used no more than three tablets of a patient's Tramadol over the course of one and one-half years, between January 2021 and June 2022.

23. Respondent argued that his use of Tramadol had no effect on his mental status or ability to treat his patients and that he experienced no symptoms of substance use or impairment at work or outside of work and displayed no signs of impairment or behavioral changes. Respondent supported this argument with declarations from his wife, Kristina L. Boutros; Man Y. Jung, Pharm.D.; Mary Ballard, Administrative director of Ballard Homes, which operates the residential care facilities at which respondent serves as medical director; Kathy Wojno, MSN, RN, Chief Executive Officer of Monrovia Memorial Hospital, where respondent is on the medical staff; and Rupdev S. Khosa, M.D., a colleague. (Exs. B through F, respectively.)

24. Respondent argued that the patient population he serves includes many elderly and disabled patients, that he poses no danger to their safety, and that an ISO would disrupt their treatment. Respondent's counsel minimized respondent's use of a controlled substance without a prescription, calling it a "technical" violation of the Health and Safety Code.

LEGAL CONCLUSIONS

1. The Board is the state agency charged with administering and enforcing the Medical Practice Act, Business and Professions Code section 2000 et seq., which governs the practice of licensed physicians and surgeons in the State of California. (Bus. & Prof. Code, § 2004.)

2. When a person holding a certificate appears to be unable to practice safely due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. (Bus. & Prof. Code, § 820.) "If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may . . . (b) suspend the licentiate's right to practice. . . ." (Bus. & Prof. Code, § 822.) "The licensing agency may proceed against a licentiate under either Section 820, or 822, or under both sections." (Bus. & Prof. Code, § 824.)

3. "The board shall take action against any licensee who is charged with unprofessional conduct." (Bus. & Prof. Code, § 2234.)

4. "Unprofessional conduct" is defined to include using a controlled substance to the extent, or in such a manner, as to be dangerous or injurious to the licensee, a patient, or the public, or to the extent that the use impairs the ability of the licensee to practice medicine safely. (Bus. & Prof. Code, § 2239.) No physician may self-administer a controlled substance. (Health & Saf. Code, § 11170.)

5. An administrative law judge may issue an interim order "suspending a license, imposing drug testing, continuing education, supervision of procedures,

limitations on the authority to prescribe, furnish, administer, or dispense controlled substances, or other license restrictions.” (Gov. Code, § 11529, subd. (a).)

6. An administrative law judge may issue an ISO suspending a certificate:

only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act . . . or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare.

(Gov. Code, § 11529, subd. (a).)

7. An administrative law judge “shall grant the interim [suspension] order where, in the exercise of discretion, the administrative law judge concludes that: (1) [t]here is a reasonable probability that the petitioner will prevail in the underlying action[; and] (2) [t]he likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.” (Gov. Code, § 11529, subd. (e).)

8. Petitioner bears the burden of proof; the standard of proof is a preponderance of the evidence. (Gov. Code, § 11529, subd. (e).)

9. Respondent is subject to an interim order under Government Code section 11529 in that there is a reasonable probability that petitioner will prevail in the

underlying action, and the likelihood of injury to the public in not issuing the Order below outweighs the likelihood of injury to the licensee in issuing the Order.

10. Respondent has admittedly used a controlled substance that a patient gave him and that was not prescribed to him, a violation of the Medical Practice Act and the Health and Safety Code, constituting unprofessional conduct. Respondent's reluctance to admit the diversion to the Board's investigators raises concerns about the extent of respondent's misuse of controlled substances and the risk of further misuse. The evidence is sufficient to demonstrate that respondent's unrestricted practice will endanger the public health, safety, or welfare. (Factual Findings 1-26.)

11. Respondent presented evidence to demonstrate, however, that action less drastic than suspension would be sufficient to protect respondent's patients and the public. Consequently, respondent shall be ordered to abstain from using any controlled substance without a prescription from a treating physician and shall submit to regular random biological fluid testing.

ORDER

1. The Petition for an ISO suspending respondent's certificate is denied; however, Physician's and Surgeon's Certificate Number A 42891, issued to respondent, Jason K. Boutros, is restricted as set forth below, pending a final decision on an accusation.


2. During the period this Order is in effect, respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription.

This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

3. Respondent shall promptly submit to biological fluid testing, at respondent's expense, and shall continue to do so during the period of this Order. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Respondent shall maintain this laboratory or service contract during the effective period of this Order. A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent.

4. Failure to comply with the restrictions and conditions outlined above shall be a violation of this Order and cause for immediate suspension.

DATE: 12/15/2022


Howard W. Cohen (Dec 15, 2022 15:54 PST)

HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings